

IMANI: Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast, hosted by the legal journalism team that doesn't know whether they're coming or going, frankly. I'm Rewire News Group's editor at large, Imani Gandy.

Jessica Pieklo: And I'm Jess Pieklo, Rewire News Group's executive editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to take a beat if you need it because this week, man ... And the Boom! Lawyered podcast is part of that mission. A big thanks to our subscribers and a welcome to our new listeners. Today we're going to talk about [Rewire News Group's special content drop, They the People](#). And we were going to do this originally as a live stream with guests and it was really going to be fantastic but man, shit happened.

IMANI: I think it's the full moon. I think it has something to do with the full moon.

JESS: It's eclipse season coming up, friends. Hold onto your butts, there's a lot of astrology that's going to get dicey. And it hit us. And so rather than move forward with something that didn't feel complete, Imani and I decided to take a beat and still talk about the drop, talk about the outrageous attack happening on trans people and trans lives in this country. And we're going to get to that livestream with our guests when we can do it the right way.

IMANI: Yes. It's just you and me, Jess.

Jessica Pieklo: Just you and me, babe.

IMANI: Just like the old days.

JESS: I got you, babe.

IMANI: I got you, babe. (singing). Okay, I don't know what's happening.

JESS: I love this because it makes me Cher. And can I just say that I've always wanted to be Cher? Anyway. Sorry, go on.

IMANI: I'll be the Sonny to your Cher.

JESS: Oh, it is. Like I teed up, this country is in the throes of an ongoing attack on trans people, calling them groomers and pedophiles for simply existing, and this radical idea of demanding equality. These attacks are spearheaded by organizations like Moms for Liberty and Alliance Defending Freedom. They're well-organized and their campaign is multilayered. From book and drag show bans that have been sweeping GOP state legislatures to this whole groomer rhetoric and bullshit spewing from conservative lawmakers and social media influencers, Imani, the coordination is pretty clear. This isn't all just accidentally happening at one time. Trans folks are the new boogeyman hiding under your bed where abortion used to hide.

IMANI: They've replaced abortion as the scariest thing ever. Ai, jai, jai. It's just so obnoxious.

JESS: It's terrible. But at the heart of this is this whole idea ... And we've been talking about it all season long so far...

IMANI: It's the third episode, what do you mean all season long? All podcast long.

JESS: ... on this podcast for a while, all podcast long. But this idea of really, truly who gets to be a person in this country and the idea that conservatives are out to redefine that.

IMANI: Yeah. The anti-trans campaign is nonsense. It's this zero-sum game mentality that has engulfed American politics so that any request for equal rights on the part of trans people necessarily means taking away rights from cis people, from cisgender people. That's what anti-trans activists would like you to believe.

JESS: They sure would. But the 574 anti-trans bills introduced in 2023 alone-

IMANI: Wait, wait, wait, wait, wait. Did you say 574?

JESS: 574. For real, 574 anti-trans bills introduced in 2023 alone. We have been covering that escalation in abortion rights, politics and landscape spaces, and it took us a while to get to that escalation in the anti-abortion spaces. It took them a hot fucking second to get there attacking trans folks. Those bills tell a story of a burgeoning genocide in which people are forced to either de-transition, either explicitly or through banning gender-affirming care and just making the ability to transition never a reality.

IMANI: And I really do want to emphasize that this is a genocide. We're not seeing trans people being rounded up and shipped off somewhere but the essence of being trans is the desire to be who you are. And if states are banning you from getting the medication and the healthcare that allows you to be who you are, then that's killing that part of you. I don't see it as anything other than genocide. And quite frankly, the media isn't helping. You've got legacy newspapers like the New York Times, which literally outright refuse to balance their rampant anti-trans coverage with some coverage from actual trans journalists.

JESS: Hire a trans journalist, literally one.

IMANI: Just one, a half a one. Hire them part-time. You've got to start publishing trans people. Don't hire them part-time, hire them full-time and give them god damned benefits. But that's why we thought it would be important to have a conversation with trans people and to talk about our content, drop They the People. But of course, as Jess said, shit happened and we couldn't get those guests for this particular episode. We're going to go ahead and talk to you about it ourselves god damn it.

JESS: Absolutely. Because the reality is that trans people are not being deterred, despite all of these attacks on their existence. They're fighting for the rights in courts and in state houses across the country. For example, earlier this week, Lambda Legal in the National Health Law Program filed a lawsuit to block North Carolina's gender affirming care ban. That case is called *Voe v. Mansfield*. I like that we're in the *Voe*'s now.

IMANI: There's *Doe*, *Roe*, *Voe*. Oh, my goodness.

JESS: I immediately went to sound of music. It'll be a while before

IMANI: *Voe*, a deer ...

JESS: *Voe*.

IMANI: A nonbinary deer maybe, we don't know.

JESS: That's what I was just saying, a gender nonconforming deer.

IMANI: A gender nonconforming deer.

JESS: This lawsuit just happened, that means it'll be a while before we get a final ruling. And who knows what the Fourth Circuit will ultimately say? But already there's a circuit split on the issue of gender affirming care bans. And now we have another lawsuit that is potentially going to reinforce that issue and bring it up to the court.

IMANI: And I'm sure most people listening know what a circuit split is by now, you know I love them. But a circuit split is when you've got one circuit that says this is the law, and then another circuit that says, this is the law. Gender affirming care bans are unconstitutional in the Eighth Circuit. Gender affirming care bans are not unconstitutional in the Sixth Circuit. The Court's going to have to step in and resolve that split.

And like I said, the Eighth Circuit in a case called *Brandt versus Rutledge* ruled that Arkansas's gender affirming care ban is unconstitutional. And then last month in a case called *L.W. versus Skrmetti*, the Sixth Circuit Court of Appeals upheld Tennessee's gender affirming care. And that lawsuit was basically filed by a bunch of right-wing extremists. All of these lawsuits are being filed by right wing extremists and they're couching them as parental rights, when really it's animus. It's animus, it's malice, it's threatening genocide by trying to, 'ban transgenderism'. And there are hundreds of bills being introduced that do just that. And there are lawsuits that are just going to keep being filed until the Supreme Court steps in.

JESS: And so the split that Imani is talking about is one that the Supreme Court is probably going to have to resolve sooner rather than later. And let's be honest, we know that there are some conservatives on that bench just chomping at the bit to get in and say some things. Sam Alito has some big thoughts on what's going on right now. They basically just issued an advisory

opinion allowing a graphic designer to discriminate against LGBTQ people last term, that was fun, on the off chance that they may have to make wedding cakes one day or wedding websites one day. We already did the cakes, this is websites.

I'm not confident that this is great for trans folks at the Supreme Court but the fight, as Chase Strangio says, is important because like voting in some instances, this is harm reduction trying to happen in the courts. What can happen while these lawsuits are going on? Efforts for political change elsewhere too. Just because Imani and I are talking about likely bad news from the federal courts in some of these issues, doesn't mean it's like, "Well, fuck it. Don't do anything."

IMANI: And you also can't count out state courts, like Montana. Montana just struck down Montana's gender affirming care ban. There's a lot going on but I got to say, every time I think about that 303 Creative case, the one with the lady who's like, "I don't make wedding websites now but I might someday and when I do, I want to discriminate against LGBTQ people." And the court was like, "Well, we see that you don't make wedding websites now but we're going to go ahead and issue an ... "

I think I'm going to have a stroke. And of course, 303 Creative was represented by Alliance Defending Freedom, that Christian conservative law firm that the Southern Poverty Law Center has deemed a ... terrorist group. What am I trying to say? I just said terrorist group but I meant a hate group.

JESS: Imani's going to get us sued, please don't. No, no, no. Yeah. The fact that the Alliance Defending Freedom is at the center of all of this circle of shit is no surprising. Lisa Needham wrote a piece for us for the drop really highlighting that. And the Washington Post a little while later caught on and had a piece as well. For us, she wrote about ADF, that Christian conservative law firm that Imani was talking about. And this latest no cakes for you case coming out of Colorado. Look, I brought you here to this state because it's a great place to be. But man, I don't know what Jack Phillips is doing. And I just need to say that he really does not represent most of the great state of Colorado.

IMANI: We should go TP his house. Why haven't we TP'd his house yet? Halloween's coming up. We got to think about that, we've got to make a plan.

JESS: That's amazing. This case that Lisa wrote about is ... You thought 303 Creative was bad, this is the reboot of Masterpiece Cake Shop, where Kennedy was like, "I could do OK by gay folks but ... "

IMANI: Not going to.

JESS: Yeah, not going to. All right, we've got this guy, Jack Phillips. He was the guy at Masterpiece Cake Shop, didn't want to bake cakes for same-sex couples because he has feelings about it.

IMANI: He feels some type of way.

JESS: Yeah, the Colorado Civil Rights Commission was like, "You can have feelings about it but you still have to comply with the civil rights law."

And the Supreme Court was like, "Maybe, maybe not."

That is all the background. Well, think about it. ADF wasn't satisfied, isn't satisfied, they didn't get the ruling that went far enough that they wanted a Masterpiece Cake Shop. They didn't get a ruling that went far enough like they wanted in 303 Creatives. Here they are back for their third bite at the apple on this issue with the same jamoke in Jack Phillips, the Colorado Supreme Court's going to hear this case later this year. And this is one that is likely to go up there. Lisa's piece gets into it, which is this is a cake that was basically supposed to acknowledge and celebrate a trans person's identity. And they were like, "No, we're not going to do that." It's just all messed up, Imani.

IMANI: It's even worse than that.

JESS: A fucking cake.

IMANI: It was even worse than that because the person was like, "It's celebrating my birthday." And then Jack Phillips was like, "Oh, great. We'll make you a cake for your birthday."

"And also my transition."

"Oh no, we can't do that."

It makes very little sense. But this nonsense is precisely why LGBTQ people need protection under the equal protection clause of the 14th Amendment. And thus far, they've been unable to get a court to just with their chest say that trans people are a suspect class and heightened scrutiny should apply because they are being discriminated against as trans people, as trans people.

JESS: Wait, did you just call trans people suss?

IMANI: I don't think I called trans people suss.

JESS: Explain suspect class, that sounds fishy.

IMANI: Suspect class doesn't mean a person is suspicious or suspect. It just means that they are part of a group, a discreet and insular minority, which means there're not a lot of them. They don't have a lot of political power. They're being fucking dragged through the streets like trans people are right now. And so that's what makes them a suspect class. But for some reason, no court will say that. And so the Supreme Court itself has yet to discuss what level of scrutiny

court should apply to cases involving trans people or LGB people for that matter. And so I wrote a piece for this content drop that we're talking about, They the People, that basically talks about the ways in which trans people are obviously a suspect class and nobody wants to call them that. And then I basically just blow everything up and say, "We should just say, 'fuck equal protection analysis', as we do it right now, and come up with something better."

Because traditional equal protection analysis and the legal terms that attend that analysis, like suspect class or quasi suspect class, they may not effectively combat anti-trans bigotry. Certainly not now but even if there becomes a time when a court actually looks at trans people as trans people and tries to do some level of judicial scrutiny analysis, some equal protection analysis, it might not be enough. And so maybe we need to stop talking about the equal protection clause. I feel like I'm about to be a slam poet. Maybe we need to stop talking about the equal protection clause and start talking about the equity protection clause. Snap, snap, snap, snap, snap, snap.

JESS: This is amazing, and exactly why everybody should read Imani's piece. It's so smart and a forward-looking take on what the law should be doing. What's the one thing the Constitution could do to protect trans people? There it is. And frankly, the appellate courts have been kicking the can on this issue. They just haven't wanted to address it. And I don't know exactly why that is. Maybe because it's itchy and icky and they just don't know what to do with it. But that's not a sufficient reason.

IMANI: No, it's not a sufficient reason. And as a Black woman, I'm going to say that the courts have really been holding up racial discrimination as the lone star. Because racial discrimination existed at the founding. Transphobia, not really so much. Maybe the issue is with these originalists that were like, "Well, there weren't trans people back ... "

There were but there weren't public ... This wasn't a public issue in the 18th century. And since the founders didn't really contemplate trans people, they didn't make any rules related to trans people, neither did the people who wrote the reconstruction amendment. Fuck it, that can't be correct. It cannot be that race is held up as the load star for discrimination. And you always get this heightened scrutiny, this strict scrutiny when you're analyzing discrimination against people based on their race. But the equal protection clause has to move into the 21st century. We're looking at an ongoing genocide. We have to be able to use the equal protection clause to protect trans people. It cannot be that people can make laws against a group of people based solely on animus. That can't be correct. And so I don't know.

I'm distressed about the ways that appellate courts have thus far avoided discussions on how to treat transgender individuals under the equal protection clause. And nother thing is also, I'm annoyed that appellate courts can't seem to talk about trans issues outside of an analysis because of sex. They want to always apply the discrimination on the basis of sex rubric to trans people as opposed to discrimination on the basis of being trans rubric to trans people.

JESS: Yeah, yeah. There's all of that there. And the point that you always make here, which is that discrimination faced by trans people is specific to their transgender identity, not just because of their sex assigned at birth. It is the very fact that they are trans that attracts the discriminatory conduct their way.

IMANI: Absolutely. And again, this can't be a legitimate basis for lawmaking. I'm sorry, it cannot. And even though conservatives are going to frame their campaign against trans people as concern for children and they're banning drag shows as you said, and they're citing concerns about grooming and predation, it's obvious that it's just animus. And in some cases, they can't even hide it. When lawmakers go rogue, they're doing radio interviews with a friendly audience, they're on Fox News or whatever. They're out here calling trans people demons and mutants. They're doing this in media. And then at the State House and the legislative sessions, they're talking about, "Oh, we have to protect children. We have to protect parental rights."

It's fricking nonsense.

JESS: It is. And as Garnet pointed out in her piece for the drop, it is straight out of the anti-abortion playbook. There's Bill O'Reilly calling Tiller the baby killer on his show day in and day out, to do what? Drive people out of providing abortion care and to whip people up into an anti-abortion anti-provider frenzy. And what happens? Scott Roeder assassinates Dr. Tiller in his church. This is not coincidental, not at all. It's so much, it's so gross. And really, we've hinted and alluded to it but it's really a question of when and not if the Supreme Court gets involved. And that's not great. And I also got to say, because it's me, I do these things, that the attacks on gender-affirming care, these gender-affirming care bans are directly tied to attacks that we're going to see on birth control. You cannot ban one silo of hormone treatment for example, and be like, "That's it, that's cool."

It's just that. These are Trojan horses to larger things. And the idea that folks can be only a certain way and only certain types of people in civic society, it's common. If you're a cis lady and you're like, "I don't feel comfortable in this conversation." Get fucken comfortable because you are not safe either.

IMANI: Yeah because pretty soon they're going to be forcing you to wear skirts. Remember we did that case last season about the school that was forcing girls at the school to wear skirts. It's about gender binaries, it's about gender conforming, and they're going to push it on everybody. They started off with kids but even a lot of these bills that were supposedly only targeted at kids are being targeted at adults too, the bill in Florida, for example. No one is safe. If you're cis, you're not safe, if you're straight ... If you are a Christian, white, heterosexual, cisgender male and you're rich, you're safe. Everybody else, it could be lights out.

JESS: Yeah. Not even his submissive trad wife is safe.

IMANI: No, no, not at all. Oy vey. Well, our content drop was called They the People. You can go check it out at [rewirenewsgroup.com/theythepeople](https://rewirenewsgroup.com/theythepeople). It's really brilliant, our art is amazing, our graphic designer ...

JESS: Oh, my gosh. Can we talk about the art for a second? I'm sad that we're doing this towards the end. The Barbie is amazing and everywhere. And to have a visual theme come so cleanly and so uniformly through and then also just elevate all the written content, I'm so proud, Imani.

IMANI: We done good with our content drop. If you'd like to talk to us about any of these issues about trans people, about our content drop, about Barbie, you can find me on x.com @AngryBlackLady. You can also find Jess on ... I keep wanting to say Twitter, even though it's not Twitter anymore but ... x.com.

JESS: I know. And x.com sounds like a morning show.

IMANI: It does, x.com and the douche. Anyway, you can find Jess on X, H-E-G-E-M-O-M-M-Y. Follow Rewire News Group on Twitter, Blue Sky, Threads, Instagram, TikTok, YouTube. Just get it all in there. Just get it all in your face and in your ear holes. And on that note, what are we going to do, Jess?

JESS: We are going to see on the tubes, folks.

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